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Gilani's Removal: A Step in the Right Direction

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Abstract

On 19 June 2012, Pakistan's Supreme Court issued an order aimed at removing Yusuf Raza Gilani as Prime Minister. This should have happened earlier had the court's decision in the "contempt case" on April 26 been fully implemented. The judgment was largely ignored by the administration headed by President Asif Ali Zardari, forcing the superior court's hand. This time around, President Zardari blinked and accepted the court's verdict. Gilani left office a few hours after the court spoke. After one misstep, Zardari was able to get his nominee in place as the new prime minister. This paper argues that these significant developments move Pakistan's evolving political order in the right direction. There is of course an alternative view, held by some legal scholars and others, that the Supreme Court should have exercised judicial restraint and left the decision in the "contempt case" to take the slow route towards eventual implementation.

On 19 June 2012, in what it called a "short order", Pakistan's Supreme Court removed Syed Yusuf Raza Gilani as the country's Prime Minister. He had held that position for more than four years, longer than any of his sixteen predecessors. He had been convicted weeks earlier of contempt of court. Gilani was charged in February 2012 after he refused to comply with an earlier court order that directed him to write to the Swiss authorities and demand that they reopen a money-laundering investigation against President Asif Ali Zardari that dated back to

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the mid-1990s. Under Pakistan's Constitution, a convicted person cannot serve in the national and provincial assemblies. Membership in the national assembly is required in order to hold the position of prime minister.

The court issues short orders when it requires the authorities to take immediate action. Long judgments follow later in which the court provides detailed reasoning for the position it has taken on an important point of law. In the short order of 19 June 2012, the court said that "the Election Commission shall issue a notice for disqualification and the President is required to take necessary action to ensure the continuation of the democratic process." Since the court's detailed judgment issued on 8 May 2012 was not appealed against by Gilani, or the government, "the conviction has attained finality", wrote the court in this short order.

The Supreme Court's May 2012 decision in the "contempt case" left the legislature and the government's executive branch with very little room for manoeuvre. They had to take the next few steps required by the Constitution to remove the prime minister. The speaker of the national assembly had to act within 30 days to notify the Chief Election Commissioner that Gilani could no longer hold office. Upon receiving this notification the CEC was to inform the president that since the prime minister could no longer remain in office, the national assembly had to be reconvened to elect his successor. But the Zardari administration ignored the court's instructions.

All the steps the government needed to take were clearly specified in the Constitution that was written in 1973 under the watch of Zulfikar Ali Bhutto, the founder of the Pakistan People's Party (PPP). He was then the Prime Minister. The PPP is now in power under the stewardship of Asif Ali Zardari, the founder's son-in-law. The elder Bhutto indeed disregarded some of the provisions in the Constitution that sought to limit his power, although he had a hand in drafting them. His son-in-law has also acted in that political tradition. The president, the prime minister, and the speaker of the national assembly did not implement the judges' order of May 2012, instead limiting themselves to responding to a follow-up petition moved in the court by two opposition parties, the Pakistan Muslim League (Nawaz) headed by Mian Nawaz Sharif and the Pakistan Tehrik-e-Insaf headed by Imran Khan. The petitioners asked the court to seek compliance and the court agreed.

Zardari and his close political associates have shown little respect for the Constitution or the rule of law. Under the 18th Amendment to the Constitution that was signed into law by Zardari in the fall of 2010, the president was required to transfer almost all executive authority to the prime minister who, along with his cabinet, was answerable to the parliament. Zardari, however, was not prepared to lighten his executive burden. Using the mantle of the PPP's co-chairman that he acquired following the assassination of his wife Benazir Bhutto on 27 December 2007, he has continued to exercise the kind of power he commanded before the adoption of the 18th Amendment. The Constitution also requires that once elected president,

he or she must resign from the political party that supported his or her candidacy. Zardari held on to the position of the PPP's co-chairperson. The presidency must not be used for political purposes. Under Zardari, however, all the formal and informal party meetings were held at the president's place.

With the Supreme Court's latest short order, the ball is back again in Zardari's court. And he has had no choice but to play it duly this time. A day after the Supreme Court had now spoken, President Zardari decided to accept its verdict, allowed Gilani to step down, and nominated Makhdoom Shahabuddin, another politician from south Punjab, to be the PPP candidate for the newly vacant job of prime minister. However, the judiciary scuttled that nomination. A narcotics court issued an arrest warrant against Shahabuddin and his name was then withdrawn by the presidency. Instead, Zardari put forward Raja Pervez Ashraf as his nominee for prime minister's post.

Ashraf, dubbed by the media as "Rental Raja", had been singled out as the official most responsible for giving lucrative contracts to some companies that leased to Pakistan ships with power-generating units. The ships were old and worked poorly. An investigation done by the Asian Development Bank suggested that Pakistan overpaid significantly for renting the ships. There was suspicion that kickbacks were involved. Ashraf at that time was the Minister in charge of water and power. Under pressure from the opposition and the press, he resigned from that position. This background does not seem to have bothered the president, but it is considered unlikely that the Supreme Court will look the other way. It is already engaged in investigating the power rental episode. It will also pursue the case against President Zardari that led to the removal of Gilani. With each move, President Zardari seemed to be digging a deeper political hole for himself.

With the Supreme Court's recent actions, Pakistan has taken one more step towards developing a political order based on the rule of law. The true meaning of a democratic system has been debated for decades by political scientists. There is now a consensus among the many scholars working in this field that democracy means more than the holding of periodical as also free and fair elections. It also means developing a robust system of rule of law, granting people enforceable property rights, and providing the citizenry with the institutional means to settle their disputes.

Pakistan has held free and fair elections in 2002 and 2007 and is preparing to hold another either by the end of 2012 or early in 2013. Had Gilani not been removed by the action of the Supreme Court, he would have been the first Prime Minister to complete a full term in that high office. That did not happen, but his term in office was cut short not by military intervention but by the order of an independent judiciary. A number of his predecessors were removed by the military or by the president of the day who used a clause in the Constitution that was inserted and retained by a series of authoritarian rulers. Viewed in this perspective,

the Supreme Court's latest order has brought Pakistan a step closer to a functioning democratic system. Had Gilani now stayed on in office, he would have provided his political opponents and opposition parties with ammunition of the kind that the Zardari-led government was undermining the already tenuous rule of law in Pakistan.

That said, some legal scholars do argue the case for judicial restraint, limiting the role of judges sitting in the superior courts to giving opinion on important legal matters. They should not get involved in seeing that their decisions are fully implemented. That should be the business of the government's executive branch. So runs the alternative argument.

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